

## Title 12 ETHICS PROVISIONS

## Chapter 12.06 MUNICIPAL CAMPAIGN AND OFFICEHOLDER CONTRIBUTIONS

# **Chapter 12.06**

## **MUNICIPAL CAMPAIGN AND OFFICEHOLDER CONTRIBUTIONS**

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### **Part 1**

### **DEFINITIONS**

## Sections:

- 12.06.010 Definitions.
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### **12.06.010 Definitions.**

The following definitions used in this chapter shall have the meanings set forth below. Except as otherwise provided here, the terms and provisions of this chapter shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (Government Code Section 81000 et seq.) and the regulations of the California fair political practices commission, as amended.

(Ords. 24466, 24577, 25257, 26440, 27291.)

### **12.06.020 Business entity.**

"Business entity" shall mean any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

(Ords. 24499, 24577, 25257, 26440.)

### **12.06.030 Candidate.**

"Candidate" shall mean an individual who:

- A. Is listed on the ballot; or
- B. Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective city office; or
- C. Has given his or her consent for any other person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective city office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy; or

D. Has filed a form "statement of intention" to be a candidate with the city clerk.

(Ords. 24499, 24577, 25257, 25525, 26440, 28213.)

#### **12.06.040 Committee.**

"Committee" means any person or combination of persons who, directly or indirectly, does any of the following:

- A. Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year; or
- B. Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or
- C. Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of a candidate or controlled committee.

A person or combination of persons that becomes a committee will retain its status as a committee until such time as that status is terminated pursuant to California Government Code Section 84214.

(Ords. 24499, 24577, 25257, 25447, 26440, 28624.)

#### **12.06.050 Contribution.**

A. "Contribution" means:

- 1. Any payment, loan, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, or it is clear from the surrounding circumstances that the contribution is not made for political purposes.
  - 2. An expenditure benefiting a candidate or committee made at the behest of a candidate, candidate controlled committee or elected officeholder is a contribution to the candidate, committee or elected officeholder unless full and adequate consideration is received for making the expenditure.
- B. Contributions include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person, if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; and the transfer of anything of value.
- C. The payment of salary, reimbursement for personal services or other compensation by an employer to an employee who spends any of his or her compensated time rendering services for political purposes related to a city candidate or committee is a contribution or an expenditure if:
- 1. The employee renders services at the request or direction of the employer; or
  - 2. The employee, with the consent of the employer, is relieved of any normal working

responsibilities related to his or her employment in order to render the personal services, unless the employee engages in political activity on bona fide, although compensable, vacation time or pursuant to a uniform policy allowing employees to engage in political activity.

D. Payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her, or independent expenditures made by independent committees are not deemed to be contributions for purposes of this chapter.

(Ords. 24499, 24577, 25257, 26440, 28280, 28624.)

#### **12.06.060 Controlled committee.**

"Controlled committee" shall mean a committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if such candidate, his or her agent, or any other committee such candidate controls, has a significant influence on the actions or decisions of the committee.

(Ords. 24499, 24577, 25257, 26440.)

#### **12.06.080 Election.**

"Election" and "city election" mean any regular municipal or special municipal election in the city.

(Ords. 24499, 24577, 25257, 26440, 28624.)

#### **12.06.110 Fair political practices commission.**

"Fair political practices commission" is the body charged with administering the Political Reform Act and adopting implementing regulations.

(Ords. 24499, 24577, 25257, 26440.)

#### **12.06.120 Independent committee.**

"Independent committee" shall mean all committees other than controlled committees.

(Ords. 24499, 24577, 25257, 26440.)

#### **12.06.130 Independent expenditure.**

"Independent expenditure" means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election, but which is not made to or at the behest of the affected candidate or his or her controlled committee.

(Ords. 24499, 24577, 25257, 26440, 27291, 28624.)

**12.06.150 Reserved.**

**Editor's note:** Ord. No. 28213, § 1, adopted January 8, 2008, repealed § 12.06.150, which pertained to officeholder contributions.

**12.06.160 Person.**

"Person," for purposes of this chapter, shall include an individual, business entity, foundation, organization, committee or association, nonprofit corporation, and any other organization or group of people acting in concert.

(Ords. 24499, 24577, 25257, 26440.)

**12.06.170 Political Reform Act.**

"Political Reform Act" is the California Political Reform Act of 1974 (Government Code Sections 81000 et seq., as amended).

(Ords. 24499, 24577, 25257, 26440, 28624.)

**12.06.180 Statement of intention to be a candidate.**

The form "statement of intention" is a written statement, filed with city clerk in accordance with Government Code Section 85200 and regulations thereunder, declaring intention to be a candidate for a specific elective city office.

(Ords. 24499, 24577, 25257, 25525, 26440, 28213.)

## **Part 2**

# **CAMPAIGN CONTRIBUTIONS**

### Sections:

12.06.200 Intent and purpose.

12.06.210 Campaign contribution limitations.

12.06.220 Applicability to agents.

12.06.230 Anonymous contributions.

12.06.235 Information needed prior to deposit.

12.06.240 Contributions through other persons prohibited.

12.06.250 Contributions by certain business entities prohibited.

12.06.260 Prohibited contributions - Cardrooms.

12.06.270 Reserved.

12.06.280 Reserved.

12.06.290 Campaign contribution collection period.

12.06.295 Deposit of personal funds into campaign bank accounts.

### **12.06.200 Intent and purpose.**

It is the intent of the city council of the City of San José in enacting this chapter to place realistic and enforceable limits on the amount individuals and independent committees may contribute to political campaigns in municipal office elections for the purpose of preventing the perception by the public that campaign contributors exercise undue or improper influence over elected officials. In order to achieve this purpose it is not necessary to, nor is it the city council's intent to, impose limitations on individuals and committees whose sole objective is the passage or defeat of ballot measures.

(Ords. 24499, 24577, 25257, 26440.)

### **12.06.210 Campaign contribution limitations.**

A. Until December 31, 2010, the total campaign contribution made by any person to any council candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:

1. One hundred dollars (\$100) for the primary election;
2. One hundred dollars (\$100) for the general election, if any;
3. One hundred dollars (\$100) for any special election.

B. Beginning January 1, 2011, the total campaign contribution made by any person to any council candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:

1. Two hundred dollars (\$200) for the primary election;
2. Two hundred dollars (\$200) for the general election, if any;
3. Two hundred dollars (\$200) for any special election.

C. Until December 31, 2010, the total campaign contribution made by any person to any mayoral candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:

1. Two hundred fifty dollars (\$250) for the primary election;
2. Two hundred fifty dollars (\$250) for the general election, if any;
3. Two hundred fifty dollars (\$250) for any special election.

D. Beginning January 1, 2011, the total campaign contribution made by any person to any mayoral candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:

1. Five hundred dollars (\$500) for the primary election;
2. Five hundred dollars (\$500) for the general election, if any;
3. Five hundred dollars (\$500) for any special election.

E. Beginning September 1, 2013, and thereafter on September 1st of each odd numbered year, the city clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982 - 1984 = 100) for all urban consumers in the San Francisco-Oakland-San José area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "base period" as defined in this section. The base period for the first adjustment (September 1, 2013) will be the CPI reported for the months of December 2010 and June 2013. For the second adjustment (September 1, 2015), the base period will be the CPI reported for the months of June 2013 and June 2015. The base period for subsequent adjustments will be June to June for odd numbered years. If the CPI has increased for the applicable base period, the city clerk must multiply the contribution limits established in subsections C. and D. by the percentage increase for the base period. If the calculation results in an amount that is higher than the previously established contribution limit(s) when rounded to the nearest one hundred (100) dollars, the city clerk will then increase the corresponding contribution limit(s) established in subsections C. and/or D. by the percentage increase rounded to the nearest one hundred (100) dollars and recommend that the city council adopt a resolution specifying the adjusted contribution limit(s). In the event the city council adopts a resolution specifying the contribution limits, the city clerk will publish the contribution limits no later than December 1st of each odd numbered year, beginning on December 1, 2013. In the event the CPI is no longer published, the clerk shall use as a reference another index published by either the state of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

F. If the candidate voluntarily elects to participate in the voluntary campaign expenditure limitation program, the alternative campaign contribution limitations set forth in Part 5 will apply in lieu of subsections A., B., C. and D.

(Ords. 24499, 24577, 24845, 25257, 25445, 26440, 28654.)

### **12.06.220 Applicability to agents.**

A. "Agent" shall mean any person who has express or implied authority to make or to authorize the making of expenditures on behalf of a candidate, or who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. An "agent" is also any person who is serving or has served in an advisory, decision-making, or strategic role with a candidate's campaign, with or without compensation, where that person's duties and/or actions reflect or require direct knowledge of the candidate's campaign strategy, plans and needs.

B. The prohibitions and requirements of this chapter applicable to a candidate shall also apply to the candidate's agent.

(Ords. 24499, 24577, 25257, 26440, 27291.)

#### **12.06.230 Anonymous contributions.**

A. No person may make nor may any person solicit or accept any anonymous contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value for a clearly identified candidate for San José city council or mayor.

B. All anonymous contributions must be surrendered to the director of finance for deposit in the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 24499, 24577, 25257, 26440, 28654.)

#### **12.06.235 Information needed prior to deposit.**

No contribution of any amount shall be deposited into a campaign account unless the name, address, occupation and employer of the contributor is on file in the written records of the candidate receiving the contribution.

(Ords. 25257, 26440.)

#### **12.06.240 Contributions through other persons prohibited.**

In applying the limitations set forth in this chapter to the contributions of a person, each contribution made under any of the following circumstances shall be deemed to have been made by the person and shall be included in determining whether the applicable limitation for such person has been exceeded:

A. A contribution by an employee over whom the person exercises control as a supervisor or as an owner of the business entity for which the employee works, where the contribution was coerced by the person or made at his or her instigation from monies given or promised to the employee as a gift, bonus or other form of reimbursement for the contribution.

B. A contribution of a spouse or child of the person where the contribution is coerced by the person or made from monies given or promised by the person in instigation of the contribution.

(Ords. 24499, 24577, 25257, 25447, 26440.)

#### **12.06.250 Contributions by certain business entities prohibited.**

Except as otherwise provided in this chapter, contributions by business entities shall be defined and limited in accordance with the Political Reform Act as amended.

(Ords. 24499, 24577, 25257, 25447, 26440, 28280.)

#### **12.06.260 Prohibited contributions - Cardrooms.**

A. A cardroom, cardroom owner, officer of a cardroom, key management employee of a cardroom, spouse of a cardroom owner or spouse of a cardroom officer may not make any contribution to candidates or candidate controlled committees under this chapter.



B. Cardroom and cardroom owner are as defined in Chapter 16.02 of this code.

C. A key management employee of a cardroom is any person who has the authority to hire or fire other employees.

(Ords. 24499, 24577, 25257, 26440, 28624, 28624.)

#### **12.06.270 Reserved.**

**Editor's note:** Ord. No. 28654, § 3, adopted November 3, 2009, repealed § 12.06.270, which pertained to contribution limitations to city council candidates.

#### **12.06.280 Reserved.**

**Editor's note:** Ord. No. 28654, § 4, adopted November 3, 2009, repealed § 12.06.280, which pertained to contribution limitations to mayoral candidates.

#### **12.06.290 Campaign contribution collection period.**

A. No person shall solicit or accept any campaign contribution or deposit any contributions for any campaign into any municipal campaign bank account except during the campaign contribution period.

B. The campaign contribution period for the primary municipal election for council or mayor shall:

1. Begin on the one hundred eightieth day before the primary municipal election.
2. End at midnight on the seventeenth day prior to the primary municipal election.

C. The campaign contribution period for the run-off municipal election for council or mayor shall:

1. Begin on the day after the primary municipal election for that office.
2. End at midnight on the seventeenth day prior to a run-off municipal election for that office.

D. Any contribution which is received outside of the campaign contribution period for an election shall not be accepted or deposited but shall be returned to the contributor or donor within five business days.

(Ords. 24499, 24577, 25257, 25525, 25942, 26440, 28213.)

#### **12.06.295 Deposit of personal funds into campaign bank accounts.**

A. A candidate must disclose the source of all personal funds deposited into his or her campaign bank account. If the source of the funds is a loan to the candidate, the name and address of the lender and the terms of the loan must also be disclosed.

B. The information required by subsection A. must be reported, on a form provided by the city clerk, on or before the date of the next pre-election statement which must be filed after the funds are deposited into the campaign bank account.

C. No candidate may deposit personal funds into his or her campaign bank account during the period beginning seven days prior to election day.

D. No candidate shall make loans to his or her own campaign or campaign committee where the outstanding total, at any one point in time, is more than twenty thousand dollars. Nothing in this chapter shall prohibit a candidate from making unlimited contributions to his or her own campaign.

(Ords. 24499, 24577, 25257, 26440.)

## Part 3

### INDEPENDENT COMMITTEES

Sections:

12.06.310 Contribution limitations to independent committees.

12.06.320 Contributions and expenditures by independent committees.

12.06.330 Contribution period for independent committees.

#### **12.06.310 Contribution limitations to independent committees.**

A. Until December 31, 2010, no person may make nor may any person accept any contribution to or on behalf of an independent committee making (1) a contribution to a clearly identified candidate for San José city council or mayor; or (2) an expenditure in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor which will cause the total amount contributed by the person to the independent committee to exceed two hundred fifty dollars (\$250) per election.

B. Beginning January 1, 2011, no person may make nor may any person accept any contribution to or on behalf of an independent committee making (1) a contribution to a clearly identified candidate for San José city council or mayor; or (2) an expenditure in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor which will cause the total amount contributed by the person to the independent committee to exceed five hundred dollars (\$500) per election.

C. Beginning September 1, 2013, and thereafter on September 1st of each odd numbered year, the city clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982 - 1984 = 100) for all urban consumers in the San Francisco-Oakland-San José area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "base period" as defined in this section. The base period for the first adjustment (September 1, 2013) will be the CPI reported for the months of December 2010 and June 2013. For the second adjustment (September 1, 2015), the base period will be the CPI reported for the months of June 2013 and June 2015. The base period for subsequent adjustments will be June to June for odd numbered years. If the CPI has increased for the applicable base period, the city clerk must multiply the contribution limits established in subsection B. by the percentage increase for the base period. If the calculation results in an amount that is higher than the previously established contribution limit(s) when rounded to the

nearest one hundred (100) dollars, the city clerk will then increase the corresponding contribution limit (s) established in subsection B. by the percentage increase rounded to the nearest one hundred (100) dollars and recommend that the city council adopt a resolution specifying the adjusted contribution limit (s). In the event the city council adopts a resolution specifying the contribution limits, the city clerk will publish the contribution limits no later than December 1st of each odd numbered year, beginning on December 1, 2013. In the event the CPI is no longer published, the clerk shall use as a reference another index published by either the state of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

D. If an independent committee will be contributing to or making expenditures in campaigns in addition to City of San José council or mayoral campaigns, it shall segregate, from all other contributions, the contributions received which are to be used for (1) contributions to a clearly identified candidate for San José city council or mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor. Where an independent committee has segregated contributions which are to be used for (1) contributions to a clearly identified candidate for San José city council or mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor, contributors to that committee may contribute more than the applicable contribution limit established in subsection A., B. or C. so long as no portion of the contribution in excess of the applicable contribution limit established in subsection A., B. or C. is used for (1) contributions to a clearly identified candidate for San José city council or mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor.

E. To the extent an independent committee segregates, from all other contributions, the contributions received which are to be used for (1) contributions to a clearly identified candidate for San José city council or mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor, as required by subsection D., this section is not intended to prohibit or regulate contributions to independent committees used for elections other than a San José mayoral or council election.

(Ords. 24499, 24577, 25257, 25447, 26440, 28654.)

### **12.06.320 Contributions and expenditures by independent committees.**

A. Independent committees are "persons" for purposes of the contribution limitations to city council and mayoral candidates. Any expenditure by an independent committee for a clearly identified candidate for San José city council or mayor which is not an "independent expenditure" is deemed to be a contribution to that candidate, subject to the limitations of this chapter.

B. Each independent committee making contributions or independent expenditures in a council or mayoral election which does not participate in elections other than for city offices shall file the reporting statements required by Section 12.06.910. For each expenditure or contribution, the committee shall report what amount or portion was of benefit to a particular candidate.

(Ords. 24499, 24577, 25257, 26440, 28654.)

### **12.06.330 Contribution period for independent committees.**

Contributions to independent committees for the purpose of supporting or opposing candidates for city office shall be subject to the campaign collection period set forth in Section 12.06.290.

(Ords. 25447, 26440.)

## **Part 4 TRANSFER OF FUNDS**

Sections:

12.06.410 Prohibition on transfer of funds.

12.06.420 Disclosure - Transfers to a candidate's own city and noncity campaign.

12.06.430 Reserved.

### **12.06.410 Prohibition on transfer of funds.**

A. The transfer of any city campaign funds to any other person's city campaign fund is prohibited.

B. The transfer of any city campaign contribution to any other candidate's noncity campaign fund is prohibited.

(Ords. 24499, 24577, 25257, 26440, 28212.)

### **12.06.420 Disclosure - Transfers to a candidate's own city and noncity campaign.**

A. No contribution collected for any city campaign fund may be transferred to another campaign fund of the candidate, unless a written disclosure appeared on all materials printed by the campaign committee during the campaign, which informed potential donors that such contributions are subject to being transferred to the candidate's own city and noncity campaigns, at any time, at the discretion of the candidate.

B. The disclosure required by this section shall consist of the following statement in fourteen point type: Any contribution to this campaign may be transferred to this candidate's campaign for reelection or another city or noncity campaign at (name of the candidate's) sole discretion.

(Ords. 24499, 24577, 25257, 25447, 26440.)

### **12.06.430 Reserved.**

**Editor's note:** Ord. No. 28213, § 3, adopted January 8, 2008, repealed § 12.06.430, which pertained to transfer of city officeholder funds.

## Part 5

### VOLUNTARY SPENDING LIMITS PROGRAM

#### Sections:

- 12.06.500 Voluntary campaign expenditure limits program.
- 12.06.510 Voluntary campaign expenditure limits.
- 12.06.520 Voluntary campaign expenditure limits - Transfers of campaign funds.
- 12.06.530 Expenditure limits.
- 12.06.540 Campaign contribution limits.
- 12.06.550 Notification to voters.
- 12.06.560 Expenditure limits tripled.

#### **12.06.500 Voluntary campaign expenditure limits program.**

Each candidate participating in the voluntary campaign expenditure limits program shall comply with and receive all the benefits of the provisions of this chapter.

(Ords. 25445, 26440.)

#### **12.06.510 Voluntary campaign expenditure limits.**

A. Each candidate must file an expenditure ceiling statement with the city clerk indicating whether or not he or she will participate in the voluntary campaign expenditure limits program before accepting or receiving any campaign contributions.

B. Each candidate who has filed an expenditure ceiling statement indicating participation in the program shall be subject to the expenditure limits set forth in Section 12.06.530.

C. Any candidate who declined to accept the expenditure ceiling statement in Section 12.06.530 but who, nevertheless, did not exceed the voluntary expenditure limits in the primary election or special primary election may file an amendment to the expenditure ceiling statement, accepting participation in the voluntary campaign expenditure limits program for the general or special run-off election, within fourteen days following the primary or special primary election and receive all the benefits of the program specified in this chapter.

D. Expenditures for purposes of the expenditure limits shall include in-kind or non-monetary contributions.

(Ords. 25445, 25942, 26440.)

#### **12.06.520 Voluntary campaign expenditure limits - Transfers of campaign funds.**

A. Campaign funds collected for the primary municipal election or collected for the run-off municipal election by candidates who voluntarily participate in the voluntary campaign expenditure limits program shall not be transferred to any ballot measure committee.

B. Campaign funds collected for the primary municipal election by candidates who voluntarily participate in the voluntary campaign expenditure program shall not be transferred to the candidate's run-off municipal election campaign. Remaining campaign funds after the primary municipal election shall be deemed to be surplus campaign funds and shall be distributed in accordance with the provisions of this chapter.

(Ords. 26024, 26440.)

### **12.06.530 Expenditure limits.**

A. The expenditure limits shall be set at:

1. Seventy five cents per resident of the city for candidates for the office of mayor; and
2. One dollar per resident of the district for candidates for council office.

B. The city council shall adopt an expenditure limits resolution, in advance of each election cycle, specifying the expenditure limits. The expenditure limits shall be based on census data supplied by the director of the department of planning, building and code enforcement for the city and each council district and adjusted by the percentage increase in residents as determined by population data provided by the state of California, department of finance, city/county population estimates.

C. No candidate who files an expenditure ceiling statement participating in the voluntary campaign expenditure limits program shall make any campaign expenditure above the limits set forth in the expenditure limits resolution.

D. The city council shall review the amount of the expenditure limits set forth in subsection A. above, nine months in advance of each election, to determine if any change is warranted.

(Ords. 25445, 25942, 26440.)

### **12.06.540 Campaign contribution limits.**

Candidates who participate in the voluntary campaign expenditure limits program are entitled to collect contributions in the following amounts:

A. Until December 31, 2010, the total contributions per election made by any person to any council candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than two hundred fifty dollars (\$250) in the aggregate.

B. Beginning January 1, 2011, the total contributions per election made by any person to any council candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than five hundred dollars (\$500) in the aggregate.

C. Until December 31, 2010, the total contributions per election made by any person to any mayoral candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than five hundred dollars (\$500) in the aggregate.

D. Beginning January 1, 2011, the total contributions per election made by any person to any mayoral candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than one thousand dollars (\$1,000) in the aggregate.

E. Beginning September 1, 2013, and thereafter on September 1st of each odd numbered year, the city clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982 - 1984 = 100) for all urban consumers in the San Francisco-Oakland-San José area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "base period" as defined in this section. The base period for the first adjustment (September 1, 2013) will be the CPI reported for the months of December 2010 and June 2013. For the second adjustment (September 1, 2015), the base period will be the CPI reported for the months of June 2013 and June 2015. The base period for subsequent adjustments will be June to June for odd numbered years. If the CPI has increased for the applicable base period, the city clerk must multiply the contribution limits established in subsections C. and D. by the percentage increase for the base period. If the calculation results in an amount that is higher than the previously established contribution limit(s) when rounded to the nearest one hundred (100) dollars, the city clerk will then increase the corresponding contribution limit(s) established in subsections C. and/or D. by the percentage increase rounded to the nearest one hundred (100) dollars and recommend that the city cCouncil adopt a resolution specifying the adjusted contribution limit(s). In the event the city council adopts a resolution specifying the contribution limits, the city clerk will publish the contribution limits no later than December 1st of each odd numbered year, beginning on December 1, 2013. In the event the CPI is no longer published, the clerk shall use as a reference another index published by either the state of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

(Ords. 25445, 26440, 28654.)

#### **12.06.550 Notification to voters.**

The ballot, ballot pamphlet and sample ballot shall prominently designate those candidates who participate in the program.

(Ords. 25445, 26440.)

#### **12.06.560 Expenditure limits tripled.**

Notwithstanding Section 12.06.530.

A. If a candidate who is not participating in the voluntary campaign expenditure limits program receives contributions, has cash on hand, or makes qualified expenditures equal to seventy-five percent or more of the expenditure limits set forth in the expenditure limits resolution adopted pursuant to this part, the expenditure limit shall be tripled.

B. If an independent expenditure committee(s) spend in the aggregate, in support or opposition to a

candidate, more than fifty percent of the expenditure limits set forth in the expenditure limits resolution adopted pursuant to this part, the expenditure limit shall be tripled.

(Ords. 25445, 26440.)

## **Part 6**

### **SPECIAL MUNICIPAL ELECTIONS**

Sections:

12.06.600 Special municipal elections.

12.06.610 Campaign contribution collection period - Campaign disclosure.

12.06.620 Voluntary campaign expenditure limits program - Special election.

#### **12.06.600 Special municipal elections.**

A. Except as otherwise provided by this Part 6, the provisions of Chapter 12.06 shall apply to special municipal elections. Part 6 of Chapter 12.06 shall only apply to special municipal elections which do not exceed a six-month period from the call of the special municipal election to the date of a special municipal run-off election if any.

B. The prohibition on transfers of any city campaign funds to any other person's city campaign fund in Section 12.06.410 shall apply to any special municipal election.

C. The prohibition on transfers of any city campaign funds to any other candidate's noncity campaign fund in Section 12.06.410 shall apply to any special municipal election.

D. The disclosure requirements for transfers of city campaign funds to a candidate's own city and noncity campaign in Section 12.06.420 shall apply to any special municipal election.

(Ords. 26239, 26440, 28212.)

#### **12.06.610 Campaign contribution collection period - Campaign disclosure.**

A. The campaign contribution collection periods for the special municipal election and a special municipal runoff election shall:

1. Begin on the date that the special municipal election is set by the city council and begin the day after the special municipal election for any runoff election.
2. End at midnight on the seventh day prior to the election and the seventh day prior to any runoff election.

B. Each candidate and each committee shall file, as a public record with the city clerk, cumulative itemized campaign statements completed on campaign statement forms required to be filed by the regulations of the fair political practices commission by no later than the fifth day prior to the special municipal election and the fifth day prior to any special municipal runoff election.



(Ords. 26239, 26440, 28213.)

### **12.06.620 Voluntary campaign expenditure limits program - Special election.**

A. Unless otherwise provided in this Part 6, each candidate in any special municipal election participating in the voluntary campaign expenditure limits program shall comply with and receive all the benefits of this chapter.

B. Campaign funds collected for a special municipal election by candidates including those candidates participating in the voluntary campaign expenditure limits program may be transferred to the candidate's special municipal run-off election campaign.

(Ords. 26239, 26440.)

## **Part 7**

## **DEBT RETIREMENT, AND SURPLUS CAMPAIGN FUNDS**

Sections:

12.06.710 Deadline for debt retirement.

12.06.720 Surplus campaign funds.

### **12.06.710 Deadline for debt retirement.**

A. No money can be collected for debt retirement after the end of the campaign contribution collection period as set forth in Section 12.06.290.

B. A candidate must retire all campaign-related debts, including loans, within six months after the date of the election.

C. A campaign-related debt, including any loan, which remains unpaid more than six months after the election is deemed to have been a campaign contribution which was accepted at the time the debt was incurred.

D. It is a violation of this section to forgive all or part of a loan or debt which is owed to the person by a candidate and which exceeds the applicable contribution limitations. Forgiveness of a loan or debt shall not be deemed to include the failure to collect the loan or debt where there have been substantial attempts, in good faith, to collect the monies owed and such efforts have proved unsuccessful. In such case, a candidate is not exonerated from violations of this chapter if an outstanding loan or debt exceeds the contribution limitations.

(Ords. 24499, 24577, 25257, 26440.)

### **12.06.720 Surplus campaign funds.**

Any remaining campaign funds in excess of expenses incurred for allowable expenses as specified under the Political Reform Act, shall be deemed to be surplus campaign funds. Within ninety days after withdrawal, defeat, or election to office, the surplus campaign funds shall be returned to the contributors

on a pro rata basis, or turned over to the general fund.

(Ords. 25257, 26440, 28212.)

## **Part 8**

### **OFFICEHOLDER ACCOUNTS\***

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**\*Editor's note:** Ord. No. 28212, § 6, adopted January 8, 2008, repealed Part 8, §§ 12.06.810 - 12.06.890, which pertained to officeholder accounts. Section 8 of Ordinance 28212 enacted a new Part 8, § 12.06.810, effective July 1, 2008.

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Sections:

12.06.810 Officeholder account prohibited.

#### **12.06.810 Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

(Ord. 28212.)

**12.06.820 - 12.06.890 Reserved.**

## **Part 9**

### **CAMPAIGN DISCLOSURE**

Sections:

12.06.910 Statements and reporting requirements.

12.06.915 Electronic campaign disclosure.

12.06.920 Duties of the city clerk.

12.06.930 Disclosure of post-election payment agreements.

#### **12.06.910 Statements and reporting requirements.**

A. Each candidate, candidate controlled committee and independent committee receiving contributions or making expenditures in a City election must file with the City Clerk campaign

disclosure statements in the form and at the times required by Chapter 12.06 and the Political Reform Act. The campaign disclosure statements must show the total amount of contributions accepted and expenditures made, including independent expenditures. The campaign disclosure statements may be completed on forms required to be filed by the regulations of the fair political practices commission so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. The campaign disclosure statements must contain a declaration by the candidate or controlled committee treasurer that the candidate or committee has not accepted nor solicited any campaign contribution in violation of the requirements and limitations of this chapter.

B. When listing contributions, each candidate and candidate controlled committee receiving contributions or making expenditures in a city election must itemize all contributions accepted during the campaign contribution collection periods specified in this chapter including all amounts less than one hundred dollars (\$100).

C. The first and second campaign statements must be filed at the times prescribed for pre-election statements by the Political Reform Act as well as any other times prescribed in Chapter 12.06, for candidates, candidate controlled committees and independent committees for whom the city clerk is the regular filing official. If the city clerk is not the regular filing official for an independent committee receiving contributions and making expenditures in a city election, the independent committee must file campaign statements with the city clerk in accordance with this chapter.

D. Once an independent committee whose primary filing official is not the city clerk has filed a campaign disclosure statement with the city clerk, the committee must also file with the city clerk, within two business days, copies of campaign disclosure statements filed by the committee with its regular filing official for the previous twelve months.

E. Once an independent committee whose primary filing official is not the city clerk has filed a campaign disclosure statement with the city clerk, from that date forward, that committee's campaign disclosure statements must be filed with the city clerk in the form and at the times required by Chapter 12.06, the California Political Reform Act and the California fair political practices commission until the committee terminates or has not received contributions or made expenditures, including independent expenditures, in an election in the City of San José for four years.

F. If any person files a campaign disclosure statement after any deadline imposed by this chapter, the city clerk must fine the person ten dollars (\$10.00) per day, starting the day after the filing deadline, until the statement is filed; however, no liability may exceed the cumulative amount of reported contributions or expenditures, or \$100, whichever is greater. The city clerk may reduce or waive the fine if he or she determines that the late filing was not willful and that enforcement will not further the purposes of this chapter.

(Ords. 24499, 24577, 24733, 25257, 26440, 28624.)

### **12.06.915 Electronic campaign disclosure.**

A. Each candidate, candidate controlled committee and independent committee that is required to file campaign disclosure statements by Chapter 12.06 or the Political Reform Act must file at the same time a copy of the statement in an electronic format with the city clerk, provided the city clerk has prescribed the format at least sixty days before the statement is due to be filed.

B. Once a candidate or committee is subject to the electronic filing requirements imposed by this

section, the candidate or committee will remain subject to the electronic filing requirements until the candidate or committee files a termination statement pursuant to Chapter 12.06 and the Political Reform Act.

C. The requirements of this section do not abrogate any requirements in Chapter 12.06 or the Political Reform Act that paper copies be filed.

(Ord. 28678.)

### **12.06.920 Duties of the city clerk.**

A. The city clerk shall, at least five days before an election for mayor or city council of the City of San José, prepare a report to be published in the San José Mercury News. The report must contain the total amount of contributions and expenditures for each of the candidates and for each committee receiving contributions or making expenditures, including independent expenditures, in an election for mayor or members of city council of the City of San José. The clerk shall cause the report is published in the San José Mercury News at least two days before the election.

B. In the event the city clerk has reason to believe a late contribution has not been reported, the clerk must notify the elections commission.

(Ords. 24499, 24577, 25257, 26440, 28624.)

### **12.06.930 Disclosure of post-election payment agreements.**

A. A candidate or his or her controlled committee must disclose, on a form provided by the city clerk, any campaign-related agreements entered into by the candidate or controlled committee which provide for post-election payments. Such agreements include, but are not limited to, contingency payment or "bonus" payment plans offered by campaign consultants and agreements with persons who will receive compensation after the election for campaign services performed prior to the election.

B. A post-election payment agreement must be reported on or before the filing date of the next preelection statement which must be filed after the agreement is entered into.

(Ords. 24499, 24577, 25257, 26440.)

## **Part 10**

## **ELECTIONEERING COMMUNICATIONS\***

**\*Editor's note:** Ord. No. 28624, § 13, adopted August 11, 2009, repealed Part 10, §§ 12.06.1000 - 12.06.1030, which pertained to campaign communications, and re-enacted Part 10 as set forth herein.

Sections:

12.06.1000 Electioneering communication.

12.06.1010 Disclosure requirements - Independent expenditures for mass mailings.

12.06.1020 Reserved.

12.06.1030 Reserved.

**12.06.1000 Electioneering communication.**

A. "Electioneering communication" means any form of communication, for which payment is made, that refers to a clearly identified candidate for mayor or city council of the City of San José and is disseminated, broadcast, or otherwise published within ninety calendar days of an election for which the candidate is on the ballot.

B. If subsection A. is held to be constitutionally insufficient by final judicial decision to support the regulation provided in this part, then the term "electioneering communication" means any form of communication, for which payment is made, which promotes or supports a candidate for mayor or city council of the City of San José, or attacks or opposes a candidate for mayor or city council of the City of San José (regardless of whether the communication expressly advocates a vote for or against a candidate), and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.

(Ord. 28624.)

**12.06.1010 Disclosure of electioneering communications.**

A. Every electioneering communication in printed form paid for by a candidate or controlled committee must include the words "paid for by" immediately followed by the name, street address and city of the candidate or controlled committee that paid for the communication in a typeface that is easily legible, contrasts with the background, and is no less than twelve points in size. If an acronym is used to specify a committee name, the full name of any sponsoring person of the committee must be included in the electioneering communication disclosure required by this section.

B. Every electioneering communication in printed form paid for by an independent committee must place the following statement on the mailing in typeface no smaller than twelve points:

Notice to Voters

(Required by the City of San José)

This mailing is not authorized or approved by any candidate for city office or by any election official. It is paid for by (name and committee identification number).

(Address, city, state).

Total cost of this mailing is (amount).

If an acronym is used to specify a committee name, the full name of any sponsoring person of the committee must be included in the electioneering communication disclosure required by this section.

C. Every electioneering communication in spoken form must include the words "paid for by" immediately followed by the name of the candidate, controlled committee or independent committee that paid for the communication in a manner that is clearly audible and at the same general volume and

speed as the rest of the communication.

D. Any independent committee that makes a payment or payments or a promise of a payment or payments that cumulatively total one thousand dollars (\$1,000) or more for an electioneering communication must file with the city clerk a report on a form approved by the city clerk disclosing the independent committee's name, address, occupation, and employer, and the amount of the payment. The report must be filed within twenty-four hours of making the payment or the promise to make the payment, and must be accompanied by a legible copy of the electioneering communication if in printed form or a transcript of the electioneering communication if in spoken form.

E. Except as provided in this section, if any independent committee has received a payment or a promise of a payment from another person totaling one hundred dollars (\$100) or more specifically for the purpose of making the electioneering communication, the independent committee receiving the payment must disclose on the report the name, address, occupation, and employer of the person who made a payment or promise of a payment, the amount received and the date of the payment.

F. A person who receives or is promised a payment that is otherwise reportable under this section is not required to report the payment if the person provides goods or services in the normal course of business and receives or is promised the payment in exchange for providing goods or services.

G. The provisions of this section do not apply to:

1. News stories, commentaries or editorials disseminated, broadcast or otherwise published by newspaper, radio station, television station, internet site or any other recognized news medium unless the news medium is owned or controlled by any political party, political committee or candidate;
2. Communications to members of an organization, except those made by a political party;
3. Communications paid for by a governmental entity;
4. Communications that occur during a candidate debate or forum;
5. Communications made solely to promote a candidate debate or forum made by or on behalf of the person sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a candidate;
6. Communications in which a candidate's name is required by law to appear and the candidate is not singled out in the manner of display;
7. Spoken communications between two or more individuals in direct conversation unless at least one of the individuals is compensated for the purposes of making the communication; or
8. Communications that appear on bumper stickers, pins, stickers, badges, ribbons and other similar memorabilia.

H. Any communication, other than a communication to members of an organization, made at the behest of a candidate is a contribution to that candidate and is subject to the limits and prohibitions specified in Chapter 12.06 of the San José Municipal Code.

(Ord. 28624.)

**12.06.1020 Reserved.**

**Editor's note:** Ord. No. 28624, § 13, adopted August 11, 2009, repealed § 12.06.1020, which pertained to disclosure requirements - campaign advertisements.

**12.06.1030 Reserved.**

**Editor's note:** Ord. No. 28624, § 13, adopted August 11, 2009, repealed § 12.06.1030, which pertained to disclosure requirements - recorded telephone messages.

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